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May 22, 2002

ELECTRONICALLY FILED

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20024

**Re: Notice of *Ex Parte* Presentation by Velocita Corporation for Filing in
CC Docket 98-146.**

Dear Secretary Dortch:

Pursuant to section 1.1206(b)(1) of the Commission's Rules, Velocita Corporation, by its attorneys, submits for filing in the above-captioned docket this notice of an *ex parte* communication by electronic mail on May 22, 2002, with the members of the FCC's Local and State Government Advisory Committee. The text of the e-mail is attached hereto as Exhibit A. The e-mail also was subsequently forwarded to LSGAC member Patrick Spears at e-mail address 'pnspears2@aol.com'.

Pursuant to sections 1.1206(b)(1) and 1.49(f) of the Commissions rules, this *ex parte* notice is being electronically filed for inclusion in the public record for the above-referenced docket. Please direct any questions concerning this filing to the undersigned.

Respectfully submitted,

s/ L. Elise Dieterich
Counsel for Velocita Corporation

EXHIBIT A

-----Original Message-----

From: Dieterich, L. Elise

Sent: Wednesday, May 22, 2002 10:05 AM

To: 'kfellman@kandf.com'

Cc: 'm.praisner@co.mo.md.us'; 'tarmstro@pahousegop.com';

'pam@gov-law.com'; 'mayor@littlerock.state.ar.us';

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'Mayor@ci.boston.ma.us'; 'ehoffnar@fcc.gov'

Subject: FW: Velocita ROW Comments

Dear Mr. Fellman -

On behalf of Velocita, thank you again for your courtesy in hosting I-ROW at the most recent meeting of the LSGAC. As promised at the meeting, I am attaching an electronic link to comments filed by Velocita in October in the FCC's 706 docket, describing in greater detail some of the ROW access problems that Velocita has encountered in its effort to deploy its nationwide network. While it is a small minority of jurisdictions that, through delay and/or excessive and unlawful demands, have impeded Velocita's network deployment, this handful of jurisdictions has prevented Velocita from interconnecting portions of its network. Consequently, Velocita has been greatly delayed in its effort to render its nationwide network operational. In the absence of an operating network, Velocita is not deriving revenues, and thus is unable to meet its compensation obligations to the jurisdictions with which it has agreements. Moreover, due to the lack of a revenue stream, the company has failed to meet investor requirements or fulfill covenants in lender agreements. Further, without an operating network, Velocita cannot meet its customer commitments. As a result, the company faces the potential breach of its existing rights-of-way agreements, loss of funding from investors and lenders, and contractual damage suits by customers, all because a small number of jurisdictions are impeding deployment of a broadband network designed to serve customers nationwide. As I tried to explain at the meeting, Velocita has been successful in negotiating with over 100 rights-of-way authorities individually, and at the local level. However, because the actions of the few obstructionist jurisdictions are affecting customers and the company nationwide, Velocita has sought a solution at the federal level to its impasse in those few places. We feel strongly that a handful of localities should not be allowed to defeat the national, pro-competitive policy supporting widespread and rapid broadband deployment.

We welcome the LSGAC's efforts to educate local rights-of-way management authorities regarding the impediments to broadband deployment, and the dire consequences for the success of competition and the interests of broadband-hungry local consumers when localities make unreasonable demands or cause excessive delays. Velocita sincerely and wholeheartedly supports the effort to foster constructive, positive dialogue on this important issue, and appreciates your participation in opening the lines of communication between industry and state and local rights-of-way management authorities.

I have copied this e-mail to the other members of the LSGAC and to Dr. Emily Hoffnar, the FCC liaison to the LSGAC. Per the request of FCC staff at our recent meeting, we also will file a copy

of this e-mail as an ex parte submission in the FCC's 706 docket, No. 98-146. If you have questions or comments, please do not hesitate to contact me. With best regards,

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